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Attorneys for Complainant

**BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

KENNETH A. BERSINGER
BERSINGER & ASSOCIATES
9821 Fair Oaks Blvd., #C
Fair Oaks, CA 95628

Certified Public Accountant License No. 52384

Respondent.

Case No. AC-2002-9

OAH No. N2002090450

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
above-entitled proceedings that the following matters are true:

PARTIES

1. Carol B. Sigmann (Complainant) is the Executive Officer of the California
Board of Accountancy. She brought this action solely in her official capacity and is represented
in this matter by Bill Lockyer, Attorney General of the State of California, by Michael J.
Weinberger, Deputy Attorney General.

2. Respondents Kenneth A. Bersinger and Bersinger & Associates are
represented in this proceeding by attorney John W. Bersinger, whose address is 9821 Fair Oaks
Blvd., Ste. C, Fair Oaks, CA. 95628.

3. On or about March 18, 1989, the California Board of Accountancy issued

1 Certified Public Accountant License No. 52384 to Kenneth A. Bersinger, of Bersinger &
2 Associates. The License was in full force and effect at all times relevant to the charges brought in
3 Accusation No. AC-2002-9 and will expire on November 30, 2003, unless renewed.

4 On or about November 26, 1999, the California Board of Accountancy
5 issued Certificate No. COR 4735 to Bersinger & Associates. The Certificate was in full force
6 and effect at all times relevant to the charges brought herein and will expire on November 30,
7 2003, unless renewed.

8 JURISDICTION

9 4. Accusation No. AC-2002-9 was filed before the California Board of
10 Accountancy (Board), Department of Consumer Affairs, and is currently pending against
11 Respondents. The Accusation and all other statutorily required documents were properly served
12 on Respondents on June 11, 2002. Respondents timely filed a Notice of Defense contesting the
13 Accusation. A copy of Accusation No. AC-2002-9 is attached as exhibit A and incorporated
14 herein by reference.

15 ADVISEMENT AND WAIVERS

16 5. Respondents have carefully read, fully discussed with counsel, and
17 understand the charges and allegations in Accusation No. AC-2002-9. Respondents have also
18 carefully read, fully discussed with counsel, and understand the effects of this Stipulated
19 Settlement and Disciplinary Order.

20 6. Respondents are fully aware of their legal rights in this matter, including
21 the right to a hearing on the charges and allegations in the Accusation; the right to be represented
22 by counsel at their own expense; the right to confront and cross-examine the witnesses against
23 them; the right to present evidence and to testify on their own behalf; the right to the issuance of
24 subpoenas to compel the attendance of witnesses and the production of documents; the right to
25 reconsideration and court review of an adverse decision; and all other rights accorded by the
26 California Administrative Procedure Act and other applicable laws.

27 7. Respondents voluntarily, knowingly, and intelligently waive and give up
28 each and every right set forth above.

1 ADMISSION

2 8. Solely for purposes of this stipulation, as well as any future or further
3 administrative licensing action against or involving Respondents, Respondents admit the truth of
4 each and every charge and allegation in Accusation No. AC-2002-9.

5 9. Respondents agree that the Certified Public Accountant Licenses are
6 subject to discipline and agree to be bound by the Board's imposition of discipline as set forth in
7 the Disciplinary Order below.

8 RESERVATION

9 10. The admissions made by Respondents herein are only for the purposes of
10 this proceeding, or any other proceedings in which the California Board of Accountancy or other
11 professional licensing agency is involved, and shall not be admissible in any other criminal or
12 civil proceeding.

13 CONTINGENCY

14 11. This stipulation shall be subject to approval by the California Board of
15 Accountancy. Respondents understand and agree that counsel for Complainant and the staff of
16 the Board may communicate directly with the Board regarding this stipulation and settlement,
17 without notice to or participation by Respondents or their counsel. By signing the stipulation,
18 Respondents understand and agree that they may not withdraw their agreement or seek to rescind
19 the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt
20 this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall
21 be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action
22 between the parties, and the Board shall not be disqualified from further action by having
23 considered this matter.

24 12. The parties understand and agree that facsimile copies of this Stipulated
25 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same
26 force and effect as the originals.

27 13. In consideration of the foregoing admissions and stipulations, the parties
28 agree that the Board may, without further notice or formal proceeding, issue and enter the

1 following Disciplinary Order:

2 **DISCIPLINARY ORDER**

3 IT IS HEREBY ORDERED that Certified Public Accountant License No. 52384
4 issued to Respondent Kenneth A. Bersinger and Certificate No. COR 4735 issued to Respondent
5 Bersinger & Associates are revoked. However, the revocation is stayed and Respondents are
6 placed on probation for three (3) years on the following terms and conditions:

7 1. **Obey All Laws.** Respondents shall obey all federal, California, other
8 states' and local laws, including those rules relating to the practice of public accountancy in
9 California.

10 2. **Submit Written Reports.** Respondents shall submit, within ten (10) days
11 of completion of the quarter, written reports to the Board on a form obtained from the Board.
12 The Respondents shall submit, under penalty of perjury, such other written reports, declarations,
13 and verification of actions as are required. These declarations shall contain statements relative to
14 Respondents' compliance with all the terms and conditions of probation. Respondents shall
15 immediately execute all release of information forms as may be required by the Board or its
16 representatives.

17 3. **Personal Appearances.** Respondents shall, during the period of
18 probation, appear in person at interviews/meetings as directed by the Board or its designated
19 representatives, provided such notification is accomplished in a timely manner.

20 4. **Comply With Probation.** Respondents shall fully comply with the terms
21 and conditions of the probation imposed by the Board and shall cooperate fully with
22 representatives of the Board of Accountancy in its monitoring and investigation of the
23 Respondents' compliance with probation terms and conditions.

24 5. **Practice Investigation.** Respondents shall be subject to, and shall permit,
25 practice investigation of the Respondents' professional practice. Such a practice investigation
26 shall be conducted by representatives of the Board, provided notification of such review is
27 accomplished in a timely manner.

28 6. **Tolling of Probation For Out-of-State Residence/Practice.** In the event

1 Respondents should leave California to reside or practice outside this state, Respondents must
2 notify the Board in writing of the dates of departure and return. Periods of non-California
3 residency or practice outside the state shall not apply to reduction of the probationary period, or
4 of any suspension. No obligation imposed herein, including requirements to file written reports,
5 reimburse the Board costs, or make restitution to consumers, shall be suspended or otherwise
6 affected by such periods of out-of-state residency or practice except at the written direction of the
7 Board.

8 **7. Violation of Probation.** If Respondents violate probation in any respect,
9 the Board, after giving Respondents notice and an opportunity to be heard, may revoke probation
10 and carry out the disciplinary order that was stayed. If an accusation or a petition to revoke
11 probation is filed against Respondents during probation, the Board shall have continuing
12 jurisdiction until the matter is final, and the period of probation shall be extended until the matter
13 is final.

14 **8. Supervised Practice.** Within thirty (30) days of the effective date of this
15 decision, Respondents shall submit to the Board or its designee for its prior approval a plan of
16 practice that shall be monitored by an independent CPA who provides periodic reports to the
17 Board or its designee. Respondent shall pay all costs for such monitoring.

18 **9. Continuing Education Courses.** Respondents shall complete and
19 provide proper documentation of 24 hours of professional education courses as specified by the
20 Board at the time of Respondents' first probation appearance, to be completed within the time
21 designated by the Board. This shall be in addition to the 80 hours required for license renewal.

22 Failure to satisfactorily complete the required courses as scheduled shall
23 constitute a violation of probation.

24 **10. Samples - Audit, Review or Compilation.** During the period of
25 probation, if the Respondent undertakes an audit or review engagement, the Respondents shall
26 submit to the Board as an attachment to the required quarterly report a listing of the same. At
27 Respondents' expense, all audits and reviews performed during the probationary period must be
28 reviewed prior to issuance by an independent CPA who has been approved by the Board. The

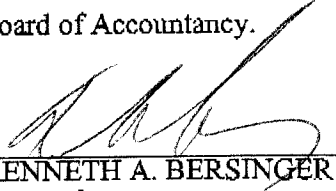
1 Board or its designee may select one or more from each category and the resulting report and
2 financial statement and all related working papers must be submitted to the Board or its designee
3 upon request.

4 11. **Cost Reimbursement.** Respondent shall reimburse the Board \$ 12,000.00
5 for its investigation and prosecution costs. The payment shall be made in quarterly payments (due
6 with quarterly written reports), the final payment being due six months before probation is
7 scheduled to terminate.

8 ACCEPTANCE

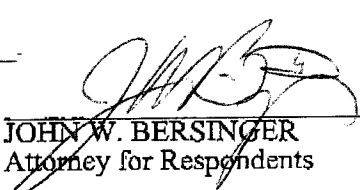
9 I have carefully read the above Stipulated Settlement and Disciplinary Order and
10 have fully discussed it with my attorney, John W. Bersinger. I understand the stipulation and the
11 effect it will have on my Certified Public Accountant License No. 52384 and on Certificate No.
12 COR 4735 issued to Bersinger & Associates. I enter into this Stipulated Settlement and
13 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
14 Decision and Order of the California Board of Accountancy.

15 DATED: 1/6/03

16 
17 KENNETH A. BERSINGER
Respondents

18 I have read and fully discussed with Respondent Kenneth A. Bersinger the terms
19 and conditions and other matters contained in the above Stipulated Settlement and Disciplinary
20 Order. I approve its form and content, and as part owner of Bersinger & Associates agree to be
21 bound by the Decision and Order of the California Board of Accountancy. .

22 DATED: 1/6/03

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24 JOHN W. BERSINGER
25 Attorney for Respondents
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DATED: 1/8/03

Michael J. Weinberger
MICHAEL J. WEINBERGER

Attorneys for Complainant

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**BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

KENNETH ALAN BERSINGER
9821 Fair Oaks Blvd., #C
Fair Oaks, CA 95628

Certificate No. 52384

And

BERSINGER & ASSOCIATES
9821 Fair Oaks Blvd., #C
Fair Oaks, CA 95628

Certificate No. COR 4735

Respondents.

Case No.AC-2002-9

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the California Board of Accountancy of the Department of Consumer Affairs, as its Decision in the above entitled matter. This Decision shall become effective on March 1, 2003.

It is so ORDERED on January 29, 2003.



President

For The CALIFORNIA BOARD OF ACCOUNTANCY
CALIFORNIA DEPARTMENT OF CONSUMER AFFAIRS

Exhibit A
Accusation No. AC-2002-9

1 BILL LOCKYER, Attorney General
of the State of California
2 MICHAEL J. WEINBERGER, State Bar No. 068612
Deputy Attorney General
3 California Department of Justice
1300 I Street, Suite 125
4 P.O. Box 944255
Sacramento, CA 94244-2550
5 Telephone: (916) 445-2271
Facsimile: (916) 327-8643
6 Attorneys for Complainant

8 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. AC-2002-9

12 KENNETH ALAN BERSINGER
9821 Fair Oaks Blvd. # C
13 Fair Oaks, CA 95628

A C C U S A T I O N

14 Certificate No. 52384

15 and

16 BERSINGER & ASSOCIATES
9821 Fair Oaks Blvd. # C
17 Fair Oaks, CA 95628

18 Certificate No. COR 4735

19 Respondents.

20
21 PARTIES

22 1. Carol Sigmann (Complainant) brings this Accusation in her official
23 capacity as the Executive Officer of the California Board of Accountancy, Department of
24 Consumer Affairs.

25 2. On or about March 18, 1989, the California Board of Accountancy issued
26 Certified Public Accountant Certificate No.52384 to KENNETH ALAN BERSINGER. The
27 Certificate was in full force and effect at all times relevant to the charges brought herein and will
28 expire on November 30, 2003, unless renewed.

3. On or about November 26, 1999, the California Board of Accountancy issued Certificate No. COR 4735 to BERSINGER & ASSOCIATES. The Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2003, unless renewed.

JURISDICTION

4. This Accusation is brought before the California Board of Accountancy (Board), under the authority of the following sections of the Business and Professions Code (Code), and the regulations promulgated thereunder.

a. Section 5100 of the Code provides that the Board may revoke, suspend or refuse to renew any permit or certificate granted under Article 4 (commencing with Section 5070) and Article 5 (commencing with Section 5080), or may censure the holder of that permit or certificate for unprofessional conduct, including but not limited to “(c) Dishonesty, fraud, or gross negligence in the practice of public accountancy or in the performance of the bookkeeping operations described in Section 5052,” and “(f) Willful violation of this chapter or any rule or regulation promulgated by the board under the authority granted under this chapter.”

b. Section 5062 of the Code states that upon completion of a compilation, review, or audit of financial statements, a licensee shall issue a report which conforms to professional standards.

c. Title 16, California Code of Regulations (hereinafter “CCR”) section 58 states that licensees engaged in the practice of public accountancy shall comply with all applicable professional standards, including but not limited to generally accepted accounting principles and generally accepted auditing standards.¹

d. CCR section 65 provides that a licensee shall be independent in the

1. Standards applicable to the performance of an audit, required by Generally Accepted Auditing Standards (GAAS), are set forth in the Statements on Auditing Standards (SAS) as codified by the American Institute of Certified Public Accountants (AICPA) by “AU” number. Standards applicable to financial reporting, required by Generally Accepted Accounting Principles (GAAP), are derived from many sources, the most authoritative of which are the AICPA Statements of Financial Accounting Standards (SFAS or FAS) and the AICPA Accounting Principles Board (APB) opinions.

1 performance of services in accordance with professional standards.

2 e. Section 5035 of the Code provides that, for purposes of the Accountancy
3 Act, the word "person" includes an individual, partnership, firm or corporation.

4 f. Section 5156 of the Code provides that an accountancy corporation shall
5 not engage in any act or omission which would constitute unprofessional conduct under any
6 statute, rule or regulation, that in the conduct of its practice the accountancy corporation must
7 observe and be bound by the same statutes, regulations and rules as are applicable to a person
8 under section 5070 of the Code, and that the Board has the same powers of suspension,
9 revocation and discipline against an accountancy corporation as against an individual.

10 g. Section 5107 of the Code states, in pertinent part, that the Board may
11 request the administrative law judge, as part of the proposed decision in a disciplinary
12 proceeding, to direct any holder of a permit or certificate, found guilty of unprofessional conduct
13 in violation of subdivision (c) of section 5100, to pay to the Board all reasonable costs of
14 investigation and prosecution of the case, including, but not limited, to attorney's fees.

15 FIRST CAUSE FOR DISCIPLINE

16 (Gross Negligence - 1998 Monarch Youth Homes Audit)

17 5. Respondents KENNETH ALAN BERSINGER and BERSINGER &
18 ASSOCIATES, are subject to disciplinary action under section 5100, subdivision (c), for gross
19 negligence in the practice of accountancy. The circumstances are as follows:

20 6. Respondents were engaged to perform, and did perform, an audit of
21 Monarch Youth Homes (client) for the year ended December 31, 1998. In performing the audit,
22 respondents committed numerous acts and omissions that constitute extreme departures from
23 generally accepted accounting principles and generally accepted auditing standards, including:

24 a. On or about March 30, 2000, Respondents obtained a written
25 representation from John Bersinger as the attorney for Monarch Youth Homes, concerning
26 litigation, claims, and assessments against the client. John Bersinger is a 40% owner of
27 BERSINGER & ASSOCIATES. Respondents failed to disclaim an opinion concerning the
28 client's financial statements and the 1998 audit based on lack of independence. Respondents'

1 lack of independence prevented performance of an audit in accordance with generally accepted
2 auditing standards. (CCR section 65; AU 150; AU 504.09; AU 220.04-06; AICPA Code of Prof.
3 Conduct, Rule 101 and Rule 101, Interpretations 101-3 and 101-9.)

4 b. Respondents failed to modify the auditor's report for a departure
5 from generally accepted accounting principles due to inadequate disclosures for notes
6 payable in the 1998 Monarch Youth Homes financial statements and thereby failed to conduct
7 the audit in accordance with generally accepted auditing standards. (AU 150; AU 431.03; SFAS
8 No.47. para. 10; AU 623.10.)

9 c. Respondents failed to properly plan the 1998 audit for Monarch Youth
10 Homes, failed to prepare written audit programs for the audit, and failed to include within the
11 working papers the objectives of the audit, the scope of the audit, and any estimates of materiality
12 and risk levels for the audit, and thereby failed to conduct the audit in accordance with generally
13 accepted auditing standards. (AU 150; AU 311.03; AU 311.05; AU 316.37; AU 329; AU
14 339.05.)

15 d. Respondents failed to obtain, through inspections, observation, inquiries,
16 or confirmations, sufficient competent evidential matter supporting the balances of assets,
17 liabilities, revenues, and expenses reported in the financial statements under the 1998 audit for
18 Monarch Youth Homes, and thereby failed to conduct the audit in accordance with generally
19 accepted auditing standards. (AU 150; AU 312.25; AU 326.02; AU 326.06; AU 339.05.)

20 e. Respondents failed to consider the beginning balances of assets, liabilities
21 and equity for the initial audit of Monarch Youth Homes for the year ended December 31, 1998,
22 and thereby failed to conduct the audit in accordance with generally accepted auditing standards.
23 (AU 420.24; AU 420.25.)

24 f. Respondents failed to employ procedures to test for proper cutoffs or other
25 events related to the period after the balance-sheet date to the date of the 1998 Monarch Youth
26 Homes audit report, and thereby failed to conduct the audit in accordance with generally accepted
27 auditing standards. (AU 560.10-11.)

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1 change in basis of accounting even though the change resulted in a substantial decrease in net
2 assets. By failing to adequately account for the change in accounting principle Respondents
3 failed to conduct the audit in accordance with generally accepted auditing standards. (AU 150;
4 AU 431.03; APB No. 20, para. 17.)

5 c. Respondents failed to modify the auditor's report for a departure
6 from generally accepted accounting principles due to inadequate disclosures for notes
7 payable in the 1999 Monarch Youth Homes financial statements and thereby failed to conduct
8 the audit in accordance with generally accepted auditing standards. (AU 150; AU 431.03; SFAS
9 No. 47, para. 10.)

10 d. Respondents failed to adequately plan the 1999 audit for Monarch Youth
11 Homes, failed to prepare written audit programs for the audit, and failed to include within the
12 working papers the objectives of the audit, the scope of the audit, and any estimates of materiality
13 and risk levels for the audit, and thereby failed to conduct the audit in accordance with generally
14 accepted auditing standards. (AU 150; AU 311.03; AU 311.05; AU 316.37; AU 329; AU
15 339.05.)

16 e. Respondents failed to obtain, through inspections, observation, inquiries,
17 or confirmations, sufficient competent evidential matter supporting the balances of assets,
18 liabilities, revenues, and expenses reported in the financial statements under the 1999 audit for
19 Monarch Youth Homes, and thereby failed to conduct the audit in accordance with generally
20 accepted auditing standards. (AU 150; AU 312.25; AU 326.02; AU 326.06; AU 339.05.)

21 f. Respondents used an alternative procedure for the 1999 audit of accounts
22 receivable balances, but made no assessment of materiality and did not relate the findings
23 regarding the accounts receivable to the sufficiency of evidence supporting the financial
24 statement assertions, and thereby failed to conduct the audit in accordance with generally
25 accepted auditing standards. (AU 330.33; AU 311.03.)

26 g. Respondents failed to employ procedures to test for proper cutoffs or other
27 events related to the period after the balance-sheet date to the date of the 1999 Monarch Youth
28 Homes audit report and thereby failed to conduct the audit in accordance with generally accepted

auditing standards. (AU 560.10-12.)

h. Respondents failed to obtain a current representation from the lawyer for Monarch Youth Homes concerning any litigation, claims, and assessments against the client, and thereby failed to conduct the 1999 Monarch Youth Homes audit in accordance with generally accepted auditing standards. (AU 337; AU 9337.05.)

FOURTH CAUSE FOR DISCIPLINE

(Failure to Exercise Due professional Care - 1999 Monarch Youth Homes Audit)

10. Respondents KENNETH ALAN BERSINGER and BERSINGER & ASSOCIATES are subject to disciplinary action under section 5062 and CCR sections 58 and 65 for failure to exercise due professional care in the performance of the audit and the preparation of the audit report for Monarch Youth Homes for 1999. The circumstances demonstrating the failure to exercise due professional care are those facts stated above in subparagraphs (a) through (h) of paragraph 9.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the California Board of Accountancy issue a decision:

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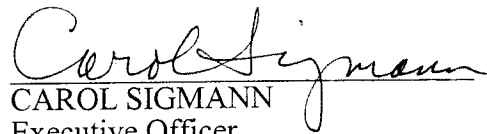
1. Revoking, suspending, or otherwise imposing discipline on Certified Public Accountant Certificate No. 52384, issued to KENNETH ALAN BERSINGER;

2. Revoking, suspending, or otherwise imposing discipline on Corporate Registration No. COR 4735, issued to BERSINGER & ASSOCIATES;

3. Ordering KENNETH ALAN BERSINGER and BERSINGER & ASSOCIATES to pay the California Board of Accountancy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 5107; and

4. Taking such other and further action as deemed necessary and proper.

DATED: June 7, 2002.


CAROL SIGMANN
Executive Officer
California Board of Accountancy
Department of Consumer Affairs
State of California
Complainant

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